See also *People* v. *Sweeney,* 55 Mich., 586, "where the intent is the gist of the crime, the presumption (of intending the natural consequences of one's acts), though a very important circumstance, is not conclusive nor alone sufficient." But, on the other hand, for a case apparently holding such constructive intent to be alone sufficient, see *Abrams* v. *U. S.,* 40 Sup. Ct. Rep. 17, and note on same in 18 MICH. L. REV. 236. It would certainly seem, however, that since the almost universal condemnation of the suggested rule of disqualification of one from testifying to his own intent (see 1 WIGMORE ON EVI., § 581), if this result is not to be in effect nullified, a court should not be allowed to instruct the jury to disregard such testimony. It would seem more logical that all the evidence bearing on the question of intent, including the presumption discussed in the principal case and the defendant's own testimony, should be left wholly to the consideration of the jury, with such cautions or comments by the court as the particular practice and the circumstances of the case would permit of. See *Oakes* v. *State,* 98 Miss. 97.

DIVORCE—ALIMONY—ALLOWANCE BASED ON FUTURE EARNINGS.—In a divorce proceeding permanent alimony was awarded the wife on the authority of a statute providing, "When a divorce shall be granted * * * the wife shall be * * * allowed such alimony as the court shall think reasonable," etc. The allowance was such that it obviously was based upon earning capacity, and the husband appealed on the ground that the statute did not authorize such judgment. *Held,* the statute did not prevent alimony awarded on such basis. *Nixon* v. *Nixon* (Kans., 1920), 188 Pac. 227.

A similar conclusion on a statute very much like the one in Kansas was reached in *Lape* v. *Lape* (Ohio, 1919), 124 N. E. 51. For discussion thereof, see 18 MICH. L. REV. 60. It may very well be that such statutes grew in the first instance out of a desire for a wider power in the court in awarding alimony, it being generally considered that in absence of statutory authorization courts were without power to set off a particular portion of the husband's property. However, in *Cizek* v. *Cizek,* 69 Neb. 797, it was held that under a statute providing that "the court may further decree to her (the wife) such part of the personal estate of the husband and such alimony out of his estate as it shall deem just and reasonable," etc., a decree directing the husband to deed certain lots to the wife was beyond the court's power. See, too, *Bacon* v. *Bacon,* 43 Wis. 203. After the decision in *Wilson* v. *Wilson,* 67 Minn. 448, which is *contra* to the principal case, the statute was amended. *Haskell* v. *Haskell,* 119 Minn. 484, was decided after the amendment.

EMINENT DOMAIN—BENEFITS WHICH MAY BE SET OFF AGAINST DAMAGES.—Appellant condemned land for right of way over defendant's property. Respondents were allowed damages for value of land taken. On appeal to the District Court, respondents were awarded substantial damages for severance. On appeal to the Supreme Court, appellants contended for the right to set off the increased value of respondents' land and benefits thereto by reason of the building and maintenance of the road, depot and side-tracks partially on the land of one of the respondents. *Held,* general benefits such

as these could not be set off. *Gallatin Valley Electric Railway* v. *Neible et al.* (Mont., 1919), 186 Pac. 689.

In *Geohegan et al.* v. *Union Elevated Railway R. Co. et al.* (Ill., 1920), 126 N. E. 763, the court *held,* in assessing damages caused by the construction of an elevated railway, evidence of traffic and resulting benefits to offset such damages is not restricted to the station in the same block, but may include others on the line.

It is now generally conceded that benefits accruing by reason of the taking and improving of property by a municipality or public utility may be set off against the remainder in compensation for damages thereto. *City of Birmingham* v. *Kennedy* (1913), 9 Ala. App. 541; *Rogers* v. *City of New London* (1915), 89 Conn. 343; *City of Atlanta* v. *Glenn* (1916), 17 Ga. App. 619; *Oil Belt Ry. Co.* v. *Lewis* (1913), 259 Ill. 108; *Music* v. *Sandy & K. R. R. Co.* (1915), 163 Ky. 628; *In re Aiken* (1914), 262 Mo. 403; *Long Island R. Co.* v. *State* (1913), 141 N. Y. S. 687 (affirmed, 218 N. Y. 661); *Cox* v. *Philadelphia, H. & P. R. R. Co.* (1906), 215 Pa. 506; *Columbia Heights Realty Co.* v. *Rudolph et al.* (1910), 31 D. C. App. 112 (affirmed, 217 U. S. 547; *In re Queen Anne Boulevard* (1913), 77 Wash. 91; *Morrison* v. *Fairmont & C. Traction Co.* (1906), 60 W. Va. 441; *Zwietusch* v. *Village of East Milwaukee* (1915), 161 Wis. 519. In *Bailey* v. *Town of Clinton* (1911), 88 S. C. 118, the court allowed both general and special benefits to be set off against the remainder. Under constitutional or statutory provisions some states do not allow a public utility the right to set off benefits, though some of them afford this right to municipalities. *St. Louis I. M. & S. R. Co.* v. *Theo. Maxfield Co.* (1910), 94 Ark. 135, decided under CONST., ART. XII, SEC. 9; KIRBY'S DIGEST, Sec. 2953; *Smith* v. *Missouri Pacific* (1913), 90 Kans. 757, decided under CONST., ART. XII, SEC. 4, GENERAL STATUTES, 1909, Sec. 1800; *City of Tacoma* v. *Wetherby* (1908), 57 Wash. 295, under CONST., ART. XVI, SEC. 1; *City of Spokane* v. *Thompson* (1912), 69 Wash. 650, under CONST., ART. I, SEC. 16; REM & BAL. CODE, Sec. 7782. A few states allow special benefits to be set off against both damages to remainder, and the part taken, *i. e.,* the criterion, is the difference between the value of the property before and after taking in view of the new conditions. *City of Paragould* v. *Milner* (1914), 114 Ark. 334 (this does not apply to public utilities); *New York, N. H. R. Co. v. City of New Haven* (1914), 81 Conn. 581; *Indianapolis & Cincinnati Traction Co.* v. *Wiles* (1910), 174 Ind. 236; *Custer Township* v. *Dawson* 1914), 178 Mich. 367, decided under PUBLIC ACTS, 1909, No. 283. The following cases have expressly held that property actually taken must be paid for, irrespective of damage to the remainder: *Chattahoochee Valley R. Co.* v. *Bass* (1911), 9 Ga. App. 83; *Oil Belt Ry. Co.* v. *Lewis, supra; Traction Co.* v. *Svara* (1913), 133 La. 900; *Hoffman* v. *City of Philadelphia* (1915), 250 Pa. 1. In *Broadway Coal Mining Co.* v. *Smith* (1910), 136 Ky. 725, a provision in the Kentucky Statutes (1909), Sec. 4292, requiring *general* benefits to be set off against damages, was held to contravene Section 13 of the state constitution. While these citations are in nowise exhaustive, they indicate the nature of the conflict on the general question. The question involved in

the *Geohegan Case* differs from these cases only in so far as it does not involve the actual taking of property but only the interference with an easement of light and air, so that any benefits where allowed must be set off against the value of the easement. In *Bohm* v. *Metropolitan Elevated Ry. Co.* (1892), 129 N. Y. 576, the court held general benefits resulting from the construction of the road as well as special benefits might be so set off. In an earlier Illinois case, *Brand* v. *Union Elevated Co.* (1913), 169 Ill. App. 449, aff'd. 258 Ill. 133, the court concluded in acordance with the instant case; see also *Rourke* v. *Home Street Ry. Co.* (Mo., 1915), 177 S. W. 1102. The question as to what constitutes direct benefits lends itself to varied interpretations. In LEWIS, EMINENT DOMAIN [3rd Ed.], Secs. 687-693, inclusive, the author suggests a classification embracing all the conflicting decisions through 1908. The decisions since then have not materially lessened the conflict. The whole question is largely one of local policy, and except from an abstract point of view the conflict is of no great importance as long as each state maintains uniformity of its own decisions.

ESCROWS—NECESSITY OF BINDING CONTRACT.—Defendant and plaintiff entered into a verbal contract whereby the former agreed to make an oil and gas lease to the latter, the consideration being a cash payment of $5,000 and certain promises contained in the lease. The lease, signed by the defendant, but not by plaintiff, was left with a bank with the understanding that plaintiff was to call "at the bank the next morning to pay the sum of $5,000 to Cooper (defendant) and get the lease." Later the same day defendant notified the bank not to deliver the lease, and next morning, when plaintiff tendered the $5,000, delivery of the lease was refused. In action for specific performance it was *held* that the verbal contract was unenforceable by reason of the statute of frauds, and that the deposit in escrow was not, therefore, irrevocable. *Blue* v. *Conner* (Tex. Civ. App., 1920), 219 S. W. 533.

This case follows the doctrine of *Campbell* v. *Thomas,* 42 Wis. 437, a doctrine which is believed to be indefensible. See "IS A CONTRACT NECESSARY TO AN ESCROW?" in 16 MICH L. REV. 569.

INSURANCE—DEATH WHILE IN MILITARY SERVICE.—A life insurance policy provided that it should "be incontestable * * * except for naval or military service in time of war, without permit, which are risks not assumed by the company, provided that, in case of the death of the insured while engaged in such service, without permit, the amount payable hereunder shall be the reserve on the policy at date of death, etc." The insured was inducted into the military service of the United States pursuant to the Selective Service law, and died at Camp Custer of pneumonia. In an action by his administrator to recover face value of the policy, it was *held,* the company was not liable. *Ruddock* v. *Detroit Life Insurance Company* (Mich., 1920), 177 N. W. 242.

The question involved in this case is discussed at considerable length, *supra,* p. 686.